

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL REVISION APPLICATION NO.297 OF 2004

The State of Maharashtra ...Applicant
V/s.

Vinod Gyani Valmiki & Anr. ...Respondents

Shri. K.V. Saste, A.P.P. for the Applicant.

**CORAM : A.S. OKA, J.
DATED : JUNE 16, 2005.**

P.C.:

1. Heard learned A.P.P. for the State. The challenge in this Revision Application filed by the State is to the order dated 6th February, 2004 by which the Respondent Nos.1 and 2 who were the Accused Nos.1 and 2 charged for committing offence punishable under section 379 read with section 34 of the Indian Penal Code for committing theft of gold ornaments of the Complainant. After the arrest of the Respondent Nos.1 and 2, the case of the prosecution is that the entire stolen property, i.e. the gold ornaments were recovered. Chargesheet was filed against the Respondent Nos.1 and 2 and two other Accused. The case of the Accused No.3 Narayan has been separated. The Accused No.4 Mukesh is allegedly the receiver of the stolen property.

2. The Accused No.4 Mukesh applied for return of

property. While the said Application was being considered, the Complainant was personally present in the Court and he gave a writing that the gold ornaments recovered by the Police do not belong to him. He gave no objection for returning the said recovered gold ornaments to the Accused No.4 Mukesh.

3. In view of this position a discharge Application was presented by the Accused No.4 and by a separate order passed by the learned Metropolitan Magistrate the Accused No.4 was discharged.

5.The Respondent No.1-Accused No.1 was enlarged on bail and the Accused No.2 was in Judicial Custody. The learned Metropolitan Magistrate noted that the gold ornaments recovered at the instance of the Respondent Nos.1 and 2 were admittedly not belonging to the Complainant. But only evidence against the Respondent Nos.1 and 2 was of recovery of the gold ornaments. Therefore, the learned Metropolitan Magistrate held that there was no material on record to frame charge against the Respondent Nos.1 and 2. Therefore, he passed order of discharge.

6. After having heard the learned A.P.P. for the State, I find no infirmity in the order passed by the

learned Metropolitan Magistrate. If the only material available against the Respondent Nos.1 and 2 was recovery of gold ornaments at their instance and said gold ornaments were admittedly not the stolen property, the learned Metropolitan Magistrate was of the view that there was no material on record to frame charge against the Respondent Nos.1 and 2. There is no case made out for interference in Revision Application. Accordingly, Revision Application is dismissed.

JUDGE